

ISSUE DATE: June 12, 1997

DOCKET NO. P-421/EM-96-1235

ORDER ACCEPTING SETTLEMENT AGREEMENT AS AMENDED AND GRANTING
AMENDED CERTIFICATE OF AUTHORITY

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
Don Storm

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Application of U S WEST
Communications, Inc. for an Amended
Certificate of Authority

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AGREEMENT AS AMENDED AND
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PROCEDURAL HISTORY

On October 17, 1996, U S WEST Communications, Inc. (USWC) filed an application to amend its certificate of territorial authority. USWC wished to expand service from its Forest Lake exchange into a small portion (approximately 1/4 square mile) of the Wyoming exchange that Contel of Minnesota, Inc., d/b/a GTE Minnesota (GTE), currently serves. USWC filed its application according to Minn. Stat. § 237.16, subd. 4. This statute provides that if an interested party or the Commission has made no objection to the application within 20 days of its filing, the application is considered approved.

On November 4, 1996, the Minnesota Department of Public Service (the Department) filed an objection, suggesting that it needed more time to review the application. The Department did not request an expedited proceeding.

On November 6, 1996, GTE filed objections to USWC's application recommending that USWC's application be denied pending a full review.

On December 30, 1996, the Commission issued a notice soliciting comments regarding an expedited proceeding in this matter.

On January 10, 1997, USWC filed its response to GTE's objection.

On February 20 and 21, 1997, respectively, GTE and the Department submitted reply comments.

On March 25, 1997, the Commission received a letter from Fairview Hospital urging swift resolution of this matter due to Fairview's need to decide certain aspects of its telecommunications services at this point in the construction phase.

This matter was originally scheduled for Commission hearing on April 8, 1997. On April 7, 1997, USWC and GTE notified the Commission that the two companies were discussing a settlement that would alleviate GTE's objections to USWC's proposal. The parties requested that this matter be removed from the Commission's April 8, 1997 Agenda.

On April 15, 1997, the parties, including the Department, filed a settlement agreement.

On May 20, 1997, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. USWC's Request

USWC stated that the owner of the property that comprises the area into which it wishes to expand has expressed interest in obtaining service from USWC. The property owner in question currently receives service from USWC at sites within USWC's Minneapolis/St. Paul Metropolitan exchange. USWC stated that it might also provide service to entities associated with the property owner's business.

USWC stated its belief that GTE has no facilities in the area under consideration but that GTE did have cable facilities near the area of proposed expansion. USWC projected that pricing for services to the property owner would be that which is currently established in the Company's authorized serving areas. USWC stated, however, that since it is unsure of the full extent of the development in the area, it cannot suggest what prices would be for customers other than the property owner. USWC stated that it might also price services on an Individual Case Basis (ICB) according to Minn. Stat. § 237.071 (Special Pricing).

USWC filed a map, and notified the local telephone company serving the area and the affected municipality as is required by Minn. Stat. § 237.16 subd. 4.

B. Parties' Initial Positions

In its initial objection, GTE noted that, contrary to USWC's belief, it does have facilities in the area in question, is currently providing service to the construction trailer on the site, and can provide any services the potential customer may need. The customer that USWC seeks to serve is the Fairview Hospital now under construction in GTE's Wyoming exchange.

In its response to GTE's objection, USWC confirmed that the property owner and potential customer is the Fairview Hospital system (Fairview). USWC noted that Minnesota statutes and the Federal Act give Fairview the flexibility to choose USWC to serve its new facility in the Wyoming exchange. USWC is willing to serve Fairview as a "competitive" local exchange carrier (CLEC). USWC is concerned that, if the Commission does not act on this matter shortly, Fairview will not have a choice of providers.

GTE raised several objections to USWC's proposal to serve the Fairview Hospital system as a CLEC. First, GTE argued that Minn. Stat. § 237.16, subd. 10 requires that USWC negotiate an interim interconnection agreement with GTE before it can provide service in GTE territory. Second, GTE stated that USWC must be clear about whom it is willing to serve. USWC's apparent intent to focus on one customer is contrary to the goal of having competition benefit all customers. Finally, GTE stated that USWC's proposal raises concerns about universal service, carrier of last resort (COLR) obligations, and the funding sources that USWC will use for the proposed expansion.

The Department initially supported USWC's proposal with certain conditions applied. The Department stated that the most important issue raised by USWC's filing is under which section of Minn. Stat § 237.16 the Commission should review it and argued that Minn. Stat. § 237.16, subd. 4 governs USWC's proposal.

The Department noted that the applicable statutory provisions (Stat. § 237.16, subd. 4) requires that the authorized local service provider seeking an amended certificate from the Commission must provide 1) notice of its intentions to all affected municipalities in the area to be served and all local service providers already certified in the area and 2) a map of the proposed serving area. The Department stated that USWC has met all the requirements of Minn. Stat. § 237.16, subd. 4. The Department recommended, however, that the Commission should require USWC to submit copies of all ICB contracts for review by the Department.

C. The Proposed Settlement

On April 15, 1997, USWC, GTE and the Department jointly submitted a Settlement Agreement (Agreement). The Agreement stipulated the following conditions:

1. USWC will negotiate an interconnection agreement with GTE according to Sections 251 and 252 of the Telecommunications Act of 1996 (the Act). USWC has initiated the negotiations.
2. When the interconnection agreement is complete, USWC and GTE will file the agreement with the Commission for approval according to Section 252(e) of the Act.
3. All parties will withdraw their objections, response and reply comments regarding USWC's application.
4. Approval of this application will not change the boundaries of the Wyoming exchange.

Both GTE and USWC will serve the area in question.

5. USWC will be subject to the Commission's competition rules proposed in Docket No. P-999/R-95-53 and other relevant proceedings. USWC's universal service, carrier of last resort, regulatory status outside its traditional serving area, and related issues will be addressed in those proceedings. USWC's regulatory status as an incumbent local exchange carrier in its traditional service areas will not be altered by this proceeding. USWC may fund its operations in the amended area in any prudent and appropriate manner.
6. USWC will file ICB contracts for services in the amended area with the Commission and the Department.
7. USWC will offer services to all customers in the amended area under the same terms and conditions as it does in its original service areas.

In support of the Agreement, the parties noted that Minn. Stat. § 237.076 endorses the use of settlements between telecommunications companies for resolving disputes. The parties also noted that the Commission retains the ability to approve, modify or reject a settlement based on the public interest.

D. Standard of Review

The Commission reviews proposed settlements pursuant to Minn. Stat. § 237.076 (1996) and may accept a settlement upon finding that to do so is in the public interest and is supported by substantial evidence.

E. Commission Analysis and Action

Having reviewed this matter in accordance with law and giving due weight to the recommendation of the Department, the Commission finds that the proposed settlement, as amended (see Ordering Paragraph 2) is in the public interest and supported by substantial evidence in the record. Accordingly, the Commission will accept the proposed settlement as amended.

The Commission notes several issues that warrant clarification at this time:

1. Amendment

USWC stated that it is willing to provide local service to Fairview as a competitive local exchange carrier (CLEC). However, USWC's regulatory status as an incumbent local exchange carrier (ILEC) would not change by merit of its provision of service outside its 'traditional' local service area. Unless the Commission's competition rules direct otherwise, the pricing, service and performance of USWC within the amended territory will be under the same regulatory framework as pricing, service and performance in its 'traditional' territory. In sum, the distinction between USWC's "traditional" and "new" service areas suggested by use of the word

“traditional” in the phrase “traditional service areas” does not exist. Therefore, Item #5 of the Agreement will be modified or clarified as follows:

. . . U S WEST's regulatory status as an incumbent local exchange carrier throughout its ~~traditional~~ service areas will not be altered as a result of this proceeding. . . .

With the amendment to its certificate of authority granted in this Order, USWC will be obligated to serve any customer within the amended territory if a customer so desired. The Agreement stipulates that USWC will provide service in its amended territory under the terms and conditions of its Minnesota tariff and according to Chapter 237 of Minnesota statutes.

2. Necessity of an Interconnection Agreement Between USWC and GTE

USWC has correctly filed this petition under, and according to, Minn. Stat. § 237.16, subd. 4. An interconnection agreement as contemplated in the Federal Act and in Minn. Stat. § 237.16, subd. 10(b) is not required as a precondition of the requested amended certificate of authority. USWC will be providing its own network facilities, currently has an interconnection arrangement with GTE for the exchange of local traffic in the area affected by this proposal, and does not require unbundled network elements from GTE.

However, before USWC can offer services in the amended territory the parties must file any interconnection agreement resulting from this Agreement with the Commission for review and approval.

3. Universal Service Fund

GTE raised concerns about the source of funding for USWC's expansion into GTE's territory. USWC has stated that it does not receive universal service funds now, nor will it in the future in this circumstance. Concerns regarding universal service, carrier of last resort and sources of funding for competitive ventures will be addressed in the Commission's Local Competition Rulemaking, Docket No. P-999/R-95-53.

4. Wyoming Exchange Boundary

The Commission's approval of USWC's request does not alter the boundary of the Wyoming exchange . GTE and USWC will both be authorized to serve the area under consideration in this matter. The Agreement reflects this fact.

ORDER

1. The proposed Settlement Agreement is accepted with the following amendment:

. . . U S WEST's regulatory status as an incumbent local exchange carrier throughout its ~~traditional~~ service areas will not be altered as a result of this proceeding. . . .

A copy of the Settlement Agreement is attached and made a part hereof.

2. USWC's request for an amended certificate of local authority is approved.
3. Prior to providing services in the expanded service territory, USWC must submit and obtain Commission approval of an interconnection agreement with GTE.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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